

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	CRIMINAL NO. 3:07-377-CMC
)	
v.)	OPINION and ORDER
)	
Mark Devin Partman,)	
)	
Defendant.)	
_____)	

Defendant, proceeding *pro se*, seeks relief in this court pursuant to 28 U.S.C. § 2255. The Government filed a response and a motion to dismiss. The court advised Defendant of the summary judgment procedure and the consequences if he failed to respond. Defendant filed his response and the matter is now before the court for ruling on the motion to dismiss.

The court has reviewed the complete record in this case. Because *United States v. Hemingway*, 734 F.3d 323 (4th Cir. 2013), is not a “retroactively applicable” decision of the Supreme Court; Defendant’s motion was filed more than a year after the Supreme Court’s decision in *Descamps v. United States*, 570 U.S. ___, 133 S. Ct. 2276 (2013); and neither *Hemingway* nor *Descamps* have been made retroactively available to cases on collateral review, Defendant’s motion is untimely. Accordingly, the court grants the Government’s motion to dismiss Defendant’s claim for relief.

The Government’s motion to dismiss is **granted**. Defendant’s motion for an evidentiary hearing is **denied**. The motion for relief under 28 U.S.C. § 2255 is dismissed with prejudice.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues

satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
November 3, 2014